



MASSWILDLIFE

DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

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MASS.GOV/MASSWILDLIFE

September 5, 2024

Littleton Conservation Commission
33 Shattuck Street
Littleton, MA 01460

Boxborough Conservation Commission
Boxborough Town Hall
29 Middle Road
Boxborough, MA 01719

Harvard Conservation Commission
13 Ayer Road
Harvard, MA 01451

Littleton Electric Light and Water Department
39 Ayer Road
Littleton, Massachusetts 01460

RE: Applicant: Littleton Electric Light and Water Department
 Project Location: *Water Lines:* Littleton (Whitcomb Avenue, Route 2), Boxborough (Beaver Brook Road), Harvard (Littleton Country Road, Swanson Road, Codman Hill Road);
 Well Construction: Littleton (off Taylor Street, R10 14 0; R10 14 1)
 Project Description: Raw and finished water mains; construction of new municipal drinking water well (Trumbull Well; PWS ID# 2158000)
 DEP Wetlands File No.: Littleton- 204-0995; Boxborough-113-0583; Harvard-RDA only
 NHESP File No.: Water Lines- RC-60246; Well Construction: RC-85971 (23-4202)

Dear Commissioners and Applicant:

The Natural Heritage & Endangered Species Program of the Massachusetts Division of Fisheries & Wildlife (the "Division") received Notices of Intent (NOI) for work in Littleton and Boxborough for the above-described Project. A Request for Determination of Applicability was submitted to Harvard Conservation Commission who did not require a Notice of Intent. The NOIs were submitted in compliance with the rare wildlife species section of the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.58(4)(b) and 10.59). The Division issued a determination pursuant to the MA Endangered Species Act Regulations (321 CMR 10.18) for all three town on December 15, 2023 (RC-60246).

The Division has determined that this Project, as currently proposed, will occur **within** the actual habitat of the following state-listed species:

MASSWILDLIFE

Scientific Name	Common Name	Taxonomic Group	State Status
<i>Sturnella magna</i>	Eastern Meadowlark	Bird	Special Concern
<i>Emydoidea blandingii</i>	Blanding's Turtle	Reptile	Threatened
<i>Ambystoma laterale pop. 1</i>	Blue-spotted Salamander	Amphibian	Special Concern

Fact sheets for most state-listed rare species can be found on our website (www.mass.gov/nhesp).

The purpose of the Division's review of the proposed project under the WPA regulations is to determine whether the project will have any adverse effects on the Resource Areas Habitats of state-listed species.

LITTLETON & BOXBOROUGH – WELL CONSTRUCTION

To avoid an adverse impact to the actual Resource Area Habitat for state-listed wetland wildlife, the following condition(s) must be met:

- 1. Turtle Protection Plan:** Prior to the start of work (including vegetation clearing or soil disturbance), the Applicant shall submit a Blanding's Turtle Protection Plan to the Division for review and written approval. Said Plan shall detail procedures for protecting state-listed turtles during construction, and be prepared and implemented by a qualified, Division-approved wildlife biologist. The Division is available for consultation on Plan development and can provide contact information for qualified biologists. The Division-approved Plan shall be implemented as written; any proposed changes to the Plan must be submitted to the Division for review and written approval prior to implementation of said changes. By December 31st of any year in which work occurs, the qualified biologist shall submit: a) a summary report to the Division detailing project status and compliance with the Plan; and b) any observations of state-listed turtles at <https://www.mass.gov/how-to/report-rare-species-vernal-pool-observations>.
- 2. Use of Native Species:** Unless otherwise approved in writing by the Division, all seed and plantings not thereafter maintained as lawn shall be native to the County as provided in The Vascular Plants of Massachusetts: A County Checklist, First Revision (Dow Cullina, Connolly, Sorrie & Somers, 2011).
- 3. Restoration or Stabilization:** The Division does not approve of the planting of state-listed species, even if the seeds are sourced outside of Massachusetts. Please carefully review seed mixes at the time of purchase as the specific composition and mixes change within a year (<https://www.mass.gov/info-details/list-of-endangered-threatened-and-special-concern-species#plants>).
- 4. Limits of Work:** No work or alteration to the soil, surface, or vegetation shall occur outside of the limits of work shown on the Plans unless otherwise approved in writing in advance by the Division.
- 5. Drill Fluid Release or any impact to Resource Area:** The **Frac-Out Contingency Plan for Horizontal Directional Drilling** shall be implemented as described.
 - a. The Contingency Plan shall be either modified to specifically list the Division and the qualified biologist as notified parties or a rider/addendum attached with a specific contact list including the Division, with relevant NHESP No. 23-4202 determination (contact: Timothy McGuire, 508-389-6366, timothy.mcguire2@mass.gov). The final document shall be included in the contractor's packet and made available onsite at all times during work.
 - b. Should the project result in direct Resource Area impacts beyond those already described in the Notice of Intent, the Division retains the right to require full restoration of impacted areas and, at the Division's sole discretion, an 'after-the-fact' Conservation & Management Permit pursuant to 321

CMR 10.23 (CMP) or amendment to the CMP issued for the well-development. In such a circumstance, the Applicant will be required to meet the performance standard to achieve a long-term Net Benefit. Projects resulting in a Take of state-listed species may only be permitted if they meet the performance standards for a CMP. The proponent must demonstrate that the project has avoided, minimized and mitigated impacts to state-listed species consistent with the following performance standards: (a) the applicant has adequately assessed alternatives to both temporary and permanent impacts to state-listed species; (b) an insignificant portion of the local population would be impacted by the project; and (c) the applicant agrees to carry out a conservation and management plan that provides a long-term Net Benefit to the conservation of the state-listed species impacted.

LITTLETON—TRUMBULL WELL DEVELOPMENT AND USE

During the 2022 15-day pump test of the proposed Taylor Street Well, a hydraulic connection was observed between the pumping and a nearby ephemeral pool when pumping at ~184 gpm (~50% requested volume). In 2024, to better understand the hydraulic connection between the proposed Taylor Street Well and surrounding ephemeral wetland features, the Applicants conducted an additional pump test at ~184 gpm and expanded the monitoring to include several key ephemeral wetlands. The Applicant submitted a report analyzing the results entitled “Re: Trumbull Well 5-Day Pumping Test Results and Analysis” (dated April 18, 2024, Weston & Sampson). The report provided data that affirmed that four of the monitored pools, provide habitat for the Blanding’s Turtle *and* showed a hydraulic connection to the pumping, with effects ranging from minor to more significant drawdowns of several inches during the pump tests. The pools with a hydraulic connection during the 2024 pump test include the three pools immediately surrounding the test well and the pool south of the test well across the finger of the Beaver Brook wetland system. Of these four pools, all but smallest pool has sufficient depth and hydroperiod to provide overwintering habitat, courtship/mating habitat, and hydration habitat (variable by year). Alterations to the ephemeral wetland features will impact the species’ movements to and between the ephemeral wetland features as well as the Beaver Brook system and could impact seasonal nesting movements. Other habitat features on the site and nearby Beaver Brook system provide critical habitat, including nesting, hydration, foraging, courtship and mating, migration/movement, and overwintering for Blanding’s Turtle. The matrix of habitats within the well site and the surrounding landscape are of critical importance to this population of turtles.

Therefore, based on a review of the information that was provided and the information that is currently contained in our database, the Division has determined that this Project, as currently proposed, **will result in both short- and long-term Adverse Effects (310 CMR 10.59) to the actual Resource Area habitat of the Blanding’s Turtle** due to impacts to the Resource Areas to provide necessary feeding, breeding, migrating, sheltering, and overwintering habitats resulting from hydraulic impacts of pumping at 50% of the requested volume.

Therefore, according to the procedures under the WPA, this project does **not** meet the performance standards for the issuance of an Order of Conditions pursuant to the rare species provisions of the MA Wetlands Protection Act (310 CMR 10.59). For this project to proceed as proposed, the applicant will need to seek a MESA Conservation & Management Permit (CMP) pursuant to 321 CMR 10.23. As provided in 310 CMR 10.37 and 10.59, when a project is proposed in *Estimated Habitat*, the issuing authority relies on the Division’s determination as to whether a proposed project has any short- or long-term effect on the habitat of the local population of any state-listed wildlife species. Accordingly, when the Division makes a determination pursuant to 321 CMR 10.23, that a project may proceed pursuant to a MESA CMP, this determination shall be presumed to satisfy the standard for no short- or long-term adverse effect pursuant to the Wetland’s regulations (310 CMR 10.05(6)(e) & 10.37 and 10.59.) [see MA DEP DWW Policy 06-1

(BRP/DWM/WWP 06-1)]. Therefore, issuance of an approving Order of Conditions prior to the issuance of a MESA CMP would be inconsistent with the rare wildlife species provisions of the WPA.

No soil or vegetation disturbance, work, clearing, grading or other activities related to the subject filing shall be conducted anywhere on the project site until the MESA permitting process is complete. If you have any questions concerning this notice, please contact Misty-Anne Marold, Senior Endangered Species Review Biologist, at (508) 389-6356 or misty-anne.marold@state.ma.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Leddick', with a stylized flourish at the end.

Jesse Leddick
Assistant Director

cc: Alexandra Gaspar, Weston & Sampson
MA DEP Central Regional Office, Wetlands